

CHAPTER 114
SECURITIES REGULATION

H.F. 553

AN ACT amending the uniform securities Act relating to the registration of securities and the registration of broker-dealers and agents, establishing fees, and providing an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 502.102, subsection 3, Code 1997, is amended to read as follows:

3. "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. "Agent" does not include an individual who represents an:

a. An issuer in doing any of the following:

~~a. (1)~~ Effecting transactions in a security exempted by section 502.202, subsection 1, 2, 3, 4, 6, 10, 11, 12, 13, or 17, or a security issued by an industrial loan company licensed under chapter 536A;

~~b. (2)~~ Effecting transactions exempted by section 502.203; ~~or.~~

(3) Effecting transactions in a federal covered security as described in sections 18(b)(3) and 18(b)(4)(D) of the Securities Act of 1933 as amended in Pub. L. No. 104-290.

~~e. (4)~~ Effecting transactions with an existing ~~employees~~ employee, member, manager, partners partner, or directors director of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.

b. A broker-dealer in effecting a transaction in this state which is limited to a transaction provided in section 15(h)(2) of the Securities Exchange Act of 1934.

"Agent" also does not include any other ~~individuals~~ individual who are is not within the intent of this subsection whom the administrator by rule or order designates. A partner, member, manager, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if such person otherwise comes within this definition.

Sec. 2. Section 502.102, Code 1997, is amended by adding the following new subsection:
NEW SUBSECTION. 5A. "Federal covered security" means any security that is a covered security under section 18(b) of the Securities Act of 1933 or rules or regulations adopted under the Securities Act of 1933.

Sec. 3. Section 502.102, Code 1997, is amended by adding the following new subsection:
NEW SUBSECTION. 13A. "Securities and exchange commission" means the United States securities and exchange commission as established pursuant to 15 U.S.C. § 78(d).

Sec. 4. Section 502.102, subsection 14, Code 1997, is amended to read as follows:

14. "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under such a lease, right, or royalty; an interest in a limited liability company or in a limited liability partnership or any class or series of such interest, including any fractional or other interest in such interest; or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or

for some other specified period. "Security" also does not include an interest in a limited liability company or a limited liability partnership if the person claiming that such an interest is not a security proves that all of the members of the limited liability company or limited liability partnership are actively engaged in the management of the limited liability company or limited liability partnership; provided that the evidence that members vote or have the right to vote, or the right to information concerning the business and affairs of the limited liability company or limited liability partnership, or the right to participate in management, shall not establish, without more, that all members are actively engaged in the management of the limited liability company or limited liability partnership.

Sec. 5. Section 502.201, Code 1997, is amended to read as follows:

502.201 REGISTRATION REQUIREMENT.

It is unlawful for any person to offer or sell any security in this state unless one of the following applies:

1. It is registered under this chapter;~~or,~~
2. The security or transaction is exempted under section 502.202 or 502.203.
3. It is a federal covered security.

Sec. 6. Section 502.202, subsection 7, Code 1997, is amended to read as follows:

7. Any security issued or guaranteed by ~~any railroad, other common carrier, a public utility,~~ or holding company which is any of the following:

~~a. Subject to the jurisdiction of the interstate commerce commission;~~

~~b. a. A registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that Act;~~or,~~~~

b. Regulated in respect of its rates and charges by a governmental authority of the United States or any state.

c. Regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province.

Sec. 7. NEW SECTION. 502.206A FEDERAL COVERED SECURITIES.

1. The administrator, by rule or order, may require the filing of any or all of the following documents with respect to a federal covered security under section 18(b)(2) of the Securities Act of 1933:

a. Prior to the initial offer of a federal covered security in this state, all documents that are part of a current federal registration statement filed with the United States securities and exchange commission under the Securities Act of 1933, together with a consent to service of process signed by the issuer and a filing fee calculated as specified in section 502.208, subsection 2.

b. After the initial offer of a federal covered security in this state, all documents that are part of an amendment to a current federal registration statement filed with the United States securities and exchange commission under the Securities Act of 1933.

c. To the extent necessary to compute fees, an annual or periodic report of the value of the federal covered securities offered or sold in this state together with the applicable filing fee, if any, calculated as specified in section 502.208, subsection 2.

2. With respect to any security that is a federal covered security under section 18(b)(4)(D) of the Securities Act of 1933, the administrator, by rule or otherwise, may require the issuer to file a notice on Form D as promulgated by the securities and exchange commission and a consent to service of process signed by the issuer not later than fifteen days after the first sale of the federal covered security in this state together with a filing fee, as established by rule adopted by the administrator.

3. The administrator, by rule or otherwise, may require the filing of any document filed with the securities and exchange commission under the Securities Act of 1933 with respect to a federal covered security under section 18(b)(3) or (4) of the Securities Act of 1933, together with a filing fee established by rule adopted by the administrator which shall not be more than one hundred dollars.

4. The administrator may issue a stop order suspending the offer and sale of a federal covered security, except a federal covered security under section 18(b)(1) of the Securities Act of 1933, if the administrator finds that both of the following apply:

a. The order is in the public interest.

b. The person against whom the stop order is issued has failed to comply with a requirement provided in this section.

5. The administrator, by rule or otherwise, may waive any requirement of this section if the administrator finds good cause that the requirement is not necessary in order to carry out the purposes of the section.

Sec. 8. Section 502.207A, subsection 5, Code 1997, is amended to read as follows:

5. In connection with an offering registered under this section, a person may be registered as an agent of the issuer under section 502.301 by the filing of an application by the issuer with the administrator for the registration of the person as an agent of the issuer and the paying of a fee of ten dollars. Notwithstanding any other provision of this chapter, the registration of the agent shall be effective until withdrawn by the issuer or until the securities registered pursuant to the registration statement have all been sold, whichever occurs first. The registration of an agent shall become effective when ordered by the administrator or on the fifth business day after the agent's application has been filed with the administrator, whichever occurs first, and the administrator shall not impose further conditions upon the registration of the agent. However, the administrator may deny, revoke, suspend, or withdraw the registration of the agent at any time as provided in section 502.304. ~~For the purposes of registration of agents under this section, the issuer and agent are not required to post bond.~~ An agent registered solely pursuant to this section is entitled to sell only securities registered under this section.

Sec. 9. Section 502.208, subsections 1, 2, 4, 5, 8, 9, 11, and 13, Code 1997, are amended to read as follows:

1. A registration statement or a notice filing made pursuant to section 502.206A may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer.

2. a. Except as provided in subsection 13 and section 502.207A, subsection 3, paragraph "g", a person who files a registration statement or a notice filing shall pay a filing fee of one-tenth of one percent of the proposed aggregate sales price of the securities to be offered to persons in this state pursuant to the registration statement or notice filing. However, except as provided in paragraph "c" of this subsection, subsection 13, and section 502.207A, subsection 3, paragraph "g", the annual filing fee shall not be less than fifty dollars or more than one thousand dollars.

b. The administrator shall retain the filing fee even if the notice filing is withdrawn or the registration is withdrawn, denied, suspended, revoked, or abandoned.

c. A person who is ~~a face amount certificate company, open end management investment company, or a unit investment trust, as defined in the Investment Company Act of 1940, the issuer of a federal covered security under section 18(b)(2) of the Securities Act of 1933~~ shall initially ~~register~~ make a notice filing and annually renew a ~~registration statement~~ notice filing in this state for an indefinite amount or a fixed amount. The fixed amount must be for two hundred fifty thousand dollars. A ~~registrant~~ notice filer shall pay a filing fee when the ~~statement~~ notice is filed. If the ~~registration statement~~ amount covered by the notice is indefinite, the ~~registrant~~ notice filer shall pay a filing fee of one thousand dollars. If the ~~registration statement~~ amount covered by the notice is fixed, the ~~registrant~~ notice filer shall pay a filing fee of two hundred fifty dollars, and the following shall apply:

(1) The ~~registrant~~ notice filer shall file a sales report with the administrator or pay an additional filing fee of one thousand two hundred fifty dollars within ninety days after the ~~registration statement's~~ notice filing's annual renewal date. If the ~~registrant~~ notice filer files a sales report with the administrator, the ~~registrant~~ notice filer shall pay an additional filing

fee of one-tenth of one percent of the amount of securities sold in excess of two hundred fifty thousand dollars. The additional filing fee must be paid within ninety days after the ~~registration statement's~~ notice filing's annual renewal date.

(2) ~~The administrator shall order the registration of~~ notice filing covering the additional securities shall be effective retroactively as of the effective date of the ~~registration statement~~ notice filing that is being amended.

4. Any document filed under this chapter or a predecessor act within five years preceding the filing of a registration statement or notice filing may be incorporated by reference in the registration statement or notice filing to the extent that the document is currently accurate.

5. The administrator may by rule or otherwise permit the omission of any item of information or document from any registration statement or notice filing.

8. The administrator may by rule require that registered securities of designated classes shall be issued under a trust indenture containing such provisions as the administrator determines.

9. a. A registration statement or notice filing shall remain effective for one year from its effective date unless it is renewed, extended, or amended by rule or order of the administrator. An initial notice filing or a renewal or amendment of a notice filing becomes effective on the date received by the administrator, or, if requested by the issuer, on the date that the initial notice filing, renewal, or amendment is effective with the securities and exchange commission. All outstanding securities of the same class as a registered security or a security for which a notice filing has been made are considered to be registered or covered by a notice filing for the purpose of any transaction by or on behalf of a person who is not the issuer, and who is not in control of the issuer or controlled by the issuer or under common control with the issuer, so long as the registration statement or notice filing is effective, unless otherwise prescribed by order. A registration statement ~~may~~ or notice filing shall not be withdrawn after its effective date if any of the securities has been sold in this state, unless permitted by rule or order of the administrator. A registration statement is not effective during the time a stop order is in effect under section 502.209. A notice filing is not effective during the time that a stop order issued pursuant to section 502.206A is in effect. A registration statement which never became effective may be withdrawn without prejudice to the issuer upon request and for good cause as determined at the discretion of the administrator.

b. During the effective period of a registration statement, the administrator may by rule or order require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering. If any of the securities registered has been sold in this state, the administrator may by rule or order extend the period for filing the reports for an additional period not exceeding two years from the date the registration became effective or from the date of its last amendment or extension.

11. ~~Except for face amount certificate companies, open end management investment companies, and unit investment trusts, as defined by the Investment Company Act of 1940,~~ Registration statements may be amended during the registration period to increase the amount of registered securities to be offered for sale to persons in this state.

a. The amendment to the registration statement becomes effective on the date ordered by the administrator.

b. Filing fees shall be calculated as specified by subsection 2, paragraph "a", and subsection 13.

13. a. ~~With the exception of face amount certificate companies, open end management investment companies, and unit investment trusts,~~ a A registrant who sold securities to persons in this state in excess of the amount of securities registered in this state at the time of the sale may file an amendment to its registration statement to register the additional securities. The following requirements shall apply:

(1) a. If a registrant proposes to sell securities to persons in this state pursuant to a registration statement that is currently effective in this state in an amount that exceeds the

amount registered in this state, the registrant must do both of the following:

- (a) (1) File an amendment to register the additional securities.
 - (b) (2) Pay an additional filing fee in the same amount as specified by subsection 2, paragraph "a", as though the amendment constitutes a separate issue.
- (2) b. If a registrant sold securities to persons in this state in excess of the amount registered in this state at that time, the registrant must do both of the following:
- (a) (1) File an amendment to register the additional securities.
 - (b) (2) Pay an additional filing fee that is three times the amount specified in subsection 2, paragraph "a", as though the amendment constitutes a separate issue.
- (3) c. The administrator may order the amendment effective retroactively as of the effective date of the registration statement that is being amended.

Sec. 10. Section 502.302, subsection 4, Code 1997, is amended to read as follows:

4. The administrator may by rule or order require a minimum capital for broker-dealers and establish limitations on aggregate indebtedness of broker-dealers in relation to net capital and may classify broker-dealers for purposes of such requirements subject to the limitations of section 15 of the Securities Exchange Act of 1934. The administrator may not, however, with respect to any broker-dealer who is a member of the national association of securities dealers, inc., or who is registered with the securities and exchange commission, require a higher minimum capital or lower ratio of aggregate indebtedness to net capital than is contained in the rules and regulations adopted by such association or commission.

Sec. 11. Section 502.303, subsections 1 and 2, Code 1997, are amended to read as follows:

1. Every registered broker-dealer shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as the administrator by rule prescribes may prescribe by rule or order, except as provided by section 15 of the Securities Exchange Act of 1934. All records so required shall be preserved for three years unless the administrator by rule prescribes otherwise for particular types of records. All required records shall be kept within this state or shall, at the request of the administrator, be made available at any time for examination at the administrator's option either in the principal office of the registrant or by production of exact copies thereof in this state.

2. Every registered broker-dealer shall file such financial reports as the administrator by rule prescribes by rule or order, not to exceed the limitations provided in section 15 of the Securities Exchange Act of 1934.

Sec. 12. Section 502.304, subsection 1, paragraph e, Code 1997, is amended to read as follows:

e. Is the subject of an order of the administrator denying, suspending, or revoking registration as a broker-dealer, agent, or insurance agent;

Sec. 13. Section 502.406, subsection 2, paragraph a, Code 1997, is amended to read as follows:

a. ~~Neither the~~ The fact that a registration statement or a notice filing has been filed under this chapter ~~nor or~~ the fact that such the statement has become effective ~~constitutes~~ does not constitute a finding by the administrator that any document filed under this chapter is true, complete or not misleading. ~~Neither any~~ Any such fact ~~nor or~~ the fact that an exemption is available for a security or a transaction ~~means~~ does not mean that the administrator has passed in any way upon the merits or qualifications of, or has recommended or given approval to, any person, security or transaction.

Sec. 14. Section 502.501, subsection 1, paragraph a, Code 1997, is amended to read as follows:

a. Violates section 502.201, subsection 1 or 2, or section 502.208, subsection 12, or section 502.406, subsection 2, paragraph "b", or

Sec. 15. Section 502.602, Code 1997, is amended to read as follows:
502.602 FILING OF SALES AND ADVERTISING LITERATURE.

The administrator may by rule or order require the filing of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication addressed or intended for distribution to prospective investors, unless the security is a federal covered security or the transaction relates to a federal covered security or the security or transaction is exempted by section 502.202 or 502.203. The administrator may by rule or order prohibit the publication, circulation or use of any advertising deemed false or misleading.

Sec. 16. Section 502.607, subsection 1, Code 1997, is amended to read as follows:

1. Pursuant to ~~the Iowa administrative procedure Act chapter 17A~~, the administrator may from time to time make, amend, and rescind such rules, forms, and orders as are necessary to carry out the provisions of this chapter, including rules and forms governing registration statements, notice filings, applications, and reports, and defining any terms, whether or not used in this chapter, insofar as the definitions are not inconsistent with the provisions of this chapter. For the purpose of rules and forms, the administrator may classify securities, persons, and other relevant matters, and prescribe different requirements for different classes.

Sec. 17. Section 502.608, subsections 2 and 3, Code 1997, are amended to read as follows:

2. The administrator shall keep a register of all applications for registration, notice filings, and registration statements which are or have been effective under this chapter and predecessor laws, and all censure, denial, suspension, or revocation orders which have been entered under this chapter and predecessor laws. The register shall be open for public inspection.

3. The information contained in or filed with any registration statement, application, notice filing, or report may be made available to the public under such rules as the administrator prescribes.

Sec. 18. Section 502.609, subsection 1, unnumbered paragraph 1, Code 1997, is amended to read as follows:

Every applicant for registration under this chapter, and every issuer which proposes to offer a security in this state, shall file with the administrator, in such form as the administrator by rule prescribes, an irrevocable consent appointing the administrator or the administrator's successor in office to be such person's attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against such person or the successor, executor or administrator of such person which arises under this chapter or any rule or order hereunder after the consent has been filed, with the same validity as if served personally on the person filing the consent. The consent need not be filed by a person who has filed a consent in connection with a previous registration or notice filing which is then in effect. Service may be made by leaving a copy of the process in the office of the administrator, but it is not effective unless the plaintiff, including the administrator when acting as such,

Sec. 19. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved May 2, 1997